

## Opinion No. 59-12

February 16, 1959

**BY:** FRANK B. ZINN, Attorney General

**TO:** Honorable C. D. Leedy Assistant Administrative Officer State Soil Conservation Committee of New Mexico P. O. Box 786 State College, New Mexico

Grounds to support and procedure to be followed in the removal of a supervisor by state soil conservation committee.

### OPINION

{\*17} In your letter of recent date, you ask the following questions:

Could several consecutive unexcused absences from district board meetings be termed neglect of duty?

What would be the exact procedure that the committee should undertake to remove a supervisor?

My opinion is that the responsibility of deciding whether or not a supervisor is guilty of neglect in the performance of his duties rests with the State Soil Conservation Committee, since a supervisor under Section 45-5-8, N.M.S.A., 1953 Compilation, 1957 Pocket Supplement, may be removed by the State Soil Conservation Committee upon notice and hearing for neglect of duty.

I will not attempt to answer your questions as separate questions for reasons which will become apparent.

Section 45-5-9, N.M.S.A., 1953 Compilation, Pocket Supplement, sets forth the powers and duties of districts and supervisors. In the aggregate, Sections 45-5-8 through 45-5-13 constitute an exhaustive and complete recital of the functions, powers and duties of a supervisor.

Where powers are conferred by statute upon an individual or a group, a duty to exercise those powers arises.

The issue can be resolved as being:

Can a supervisor perform the duties specified in Sections 45-5-8 through 45-5-13 and meanwhile fail to attend several consecutive board meetings? Would those unexcused or unexplained absences constitute neglect of duty? This would be a factual question which can only be decided as a result of a hearing held by your committee.

At the hearing, clear and convincing evidence should be produced by your committee indicating that the fact that the supervisor missed several consecutive meetings constitutes such neglect of duty as would be indicated by Sections 45-5-8 through 45-5-13.

The statutes under the heading "Soil Conservation Districts" set forth no procedure for the calling or conducting such a hearing.

I suggest that the official in question should be given ample notice by registered mail, return receipt requested, of the intended action of your board.

A period of not less than thirty (30) days should elapse between the time the notice is received by the supervisor and the date fixed for the hearing; the hearing should be public; the official should be informed that he is entitled to legal counsel (at his own expense); that he has the right to call witnesses on his own behalf; that he has the right to produce books, papers and records to be introduced as exhibits at the hearing and that he has the right to make written request of the State Soil Conservation Committee to make available their books, papers and records, should they be required by him in making answer to the charges of your committee.

I enclose a form of letter that you may use in notifying the {*\*18*} supervisor of your intended action, should you elect to proceed to remove him.

## **NOTICE**

Mr. \_\_\_\_ Supervisor, District No. \_\_\_\_

You are hereby notified that the State Soil Conservation Committee, at a meeting duly held on the \_\_\_\_ day of \_\_\_\_, 1959, decided that inasmuch as you have failed to attend \_\_\_\_ consecutive meetings of your District Board of Supervisors, said meetings having been held on \_\_\_\_, \_\_\_\_ and \_\_\_\_, respectively, that a hearing should be held by the committee to determine whether or not your unexcused absences do or do not constitute neglect of duty. For your information, neglect of duty is a ground for removal of a supervisor by the state committee, by virtue of the terms of Section 45-5-8, N.M.S.A., 1953 Compilation, Pocket Supplement.

The hearing will be held at \_\_\_\_ on the \_\_\_\_ day of \_\_\_\_, 1959, at the hour of \_\_\_\_ m.

You are further advised that the hearing will be public; that you are entitled to legal counsel (at your own expense); that you have the right to call witnesses on your own behalf; that you have the right to produce books, papers and records to be introduced as exhibits; that you have the right to make written request of the state committee to make available its books, papers and records if you feel that they are necessary in making answer to the charges of said committee.

In the event of your future failure to appear as required by this notice, such action will be taken by the committee as it may see fit.

STATE SOIL CONSERVATION COMMITTEE OF NEW MEXICO

By \_\_\_\_

Carl P. Dunifon

Assistant Attorney General